

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
5:15-CR-103-FL-1

UNITED STATES OF AMERICA

v.

RODRIGO BUSTAMANTE-MARTINEZ,

Defendant.

**ORDER**

In this case, defendant, a 43-year old citizen of Mexico, is charged with possession of firearms by an illegal alien on 14 April 2013, in violation of 18 U.S.C. §§ 922(g)(5)(A), 924(a)(2). Earlier today, at the continuation<sup>1</sup> of the hearing on the government's motion for defendant's pretrial detention, the court denied the motion and entered an order providing for defendant's release on conditions. The case is now before the court on the government's oral motion to stay defendant's release pending review by the presiding district judge, pursuant to 18 U.S.C. § 3145(a).

As announced in open court, the motion is ALLOWED in PART and DENIED in PART on the following terms: Defendant's release shall be STAYED until 4:00 p.m. today. If at that time no further stay has been ordered, defendant shall be released without further order of the court. If a further stay is ordered on or before 4:00 p.m. today, defendant shall remain in custody in accordance with the terms of such further stay and as subsequently ordered by the court.

The undersigned declines to stay defendant's release pending review by the presiding district judge as the government requests for several reasons. Defendant, an electrician, is the sole provider for his family of six, which includes three minor children and his wife, who is

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<sup>1</sup> The initial session of the detention hearing in this case was held on Friday, 23 October 2015. (See D.E. 15). At that session, the court heard the parties' evidence and argument, but given the lateness of the hour, among other considerations, deferred its ruling until this morning.

unemployed. According to the pretrial services report, he has a history of continuous employment stretching back to at least 1999. The un rebutted evidence presented at the detention hearing was that extended detention would cost defendant his job.

Moreover, on the unique circumstances presented, the likelihood of the government's success in its appeal is not great. These circumstances, in addition to those already noted, include, but are not limited to: defendant's possession of a permit to work in the United States; his approval by the immigration court in Charlotte for resident alien (*i.e.*, green card) status, but whose issuance is delayed due to immigration quotas; his posting of a \$10,000 immigration bond with the immigration court pending issuance of his green card; his residence in this district for 19 years; his status as a homeowner; the issuance of only a single state misdemeanor charge against defendant, which was later dismissed, as a result of the 2013 incident underlying the instant federal charges; his lack of a significant criminal history; the release conditions imposed in the release order; and the other reasons stated in open court.

This 26th day of October 2015.

  
James E. Gates  
United States Magistrate Judge